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**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:	)	Case No. 2:22-bk-10454-nmc
	)	
LUKE CESARETTI,	)	Chapter 11
	)	
Debtor.	)	Hearing Date: October 3, 2023
	)	Hearing Time: 9:30 a.m.

**UNITED STATES' RESPONSE TO  
U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT**

The United States of America, on behalf of its agency, the Internal Revenue Service (IRS), submits this response to the U.S. Trustee's motion to dismiss or convert (ECF No. 95). While the United States does not oppose the case ultimately being dismissed, it respectfully submits that the debtor should first amend or supplement his schedules to include asset(s) that he has failed to disclose for approximately 17 months.

In the February 9, 2022, schedules on file, the debtor listed an Individual Retirement Account (IRA) in the approximate amount of \$24,595. *See* ECF No. 1 at 25 of 71. Shortly before an August 15, 2023, hearing, the debtor informed the IRS that the debtor had another IRA in the approximate amount of \$200,000. Debtor informed the Court generally of the IRA at the August 15, 2023 hearing. However, despite requests from the IRS, the debtor has not provided specific information about the IRA (e.g., financial institution, account number) or amended his schedules to reflect this additional asset.

1 Section 541(a) of the Bankruptcy Code provides that the bankruptcy estate consists  
2 of all legal and equitable interests of a debtor in any property as of the commencement of a  
3 case, even if the debtor later exempts some of the property. *See In re Hall*, 118 B.R. 671, 673  
4 (Bankr. S.D. Ind. 1990); *see generally In re Tilman*, 53 F.4th 1160, 1163–4, 1167–8 (9th Cir.  
5 2022) (explaining that after formation of a bankruptcy estate at the time of filing, a debtor  
6 may exempt certain property to withdraw it from the estate). Prior to dismissal, the debtor  
7 should be required to schedule the IRA that has always been part of the bankruptcy estate,  
8 though it has been mentioned only recently by the debtor.

9 The United States opposes conversion of this case to chapter 7. Findings of fact and  
10 conclusions of law in the Court’s order denying confirmation (ECF 84) would require  
11 dismissal of a chapter 7 case under 11 U.S.C. § 707(b).

12 Respectfully submitted this 12th day of September 2023.

13 JASON M. FRIERSON  
14 United States Attorney

15 /s/ Patrick A. Rose  
16 PATRICK A. ROSE  
17 Assistant United States Attorney  
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**PROOF OF SERVICE**

I, Patrick A. Rose, certify that the **UNITED STATES' RESPONSE TO U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT** was served on all parties on this date via the Court's Electronic Case Filing system unless otherwise specified below.

Dated: September 12, 2023

/s/ Patrick A. Rose  
PATRICK A. ROSE  
Assistant United States Attorney